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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

8 ROYLENE RAY, *et al.*, No. C-06-1807 JSW (EMC)  
9 Plaintiffs,  
10 v. **ORDER RE JOINT LETTER  
AUGUST 15, 2008, AND L  
AUGUST 18, 2008**  
11 BLUEHIPPO FUNDING, LLC, *et al.*,  
12 Defendants. **(Docket Nos. 169, 173, 176)**

**ORDER RE JOINT LETTER OF  
AUGUST 15, 2008, AND LETTERS OF  
AUGUST 18, 2008**

**(Docket Nos. 169, 173, 176)**

15 Previously, the Court issued an order in which it warned the parties that, if their discovery  
16 disputes were not resolved through meet and confer, then it would order the personal attendance of  
17 lead trial counsel at a further meet and confer at a place and time to be ordered by the Court. *See*  
18 Docket No. 160 (order, filed on 8/11/08). The Court has now received a joint letter from the parties  
19 regarding a continuing dispute over Document Request No. 24, as well as a letter from each party  
20 with respect to Interrogatory No. 17.

Having reviewed the letters and accompanying submissions, the Court hereby orders a further meet and confer in compliance with the Court's instructions below.

## I. DISCUSSION

24 || A. Meet-and-Confer Process

25 The meet-and-confer process has fallen apart in the instant case. Both parties have failed to  
26 meet and confer in good faith. For example:

- 27 • In spite of the Court's previous comments to the parties, and in direct contravention of the  
28 Court's standing order, the meet-and-confer process has largely taken place through an

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1 exchange of e-mails, and not through person-to-person conversations. *See* Docket No. 169,  
2 Ex. 3 (e-mail correspondence).

- 3 • Plaintiffs refused to give Defendants any information about their substantive position (*e.g.*,  
4 relevance of the discovery to class certification issues) prior to any formal meet and confer.  
5 • Defendants refused to consider whether any documents produced to states other than  
6 California should be provided in the instant litigation.

7 Accordingly, the Court hereby imposes a new procedure for all future meet-and-confer  
8 sessions. If a discovery dispute arises,

- 9 (1) The parties shall meet and confer on the telephone with lead trial counsel participating and  
10 discuss: (a) what discovery the proponent seeks and (b) why the discovery sought is relevant  
11 to class certification. A blanket statement that the discovery sought is relevant to, *e.g.*,  
12 “typicality” shall not be adequate. The proponent must be *specific* about the relevance of the  
13 discovery sought. If the opposing party believes that the discovery sought is irrelevant, it  
14 shall explain its position in detail. If it asserts discovery is unduly burdensome, then it shall  
15 provide to the other side specific cost estimates and explanation of the burden. Neither side  
16 shall impose preconditions to compliance with these requirements. The parties must propose  
17 and discuss possible compromises/alternatives to resolve the dispute.
- 18 (2) If the telephone meet and confer does not resolve the dispute, the parties shall meet and  
19 confer in person as provided below. A meet and confer solely by written exchanges shall not  
20 be permitted.
- 21 (3) A meet and confer in person shall require the personal attendance of lead trial counsel. Lead  
22 trial counsel shall attend with full authority to resolve the dispute. If client authority is  
23 needed, the client shall attend as well. The location of the meet and confer shall alternate  
24 between San Francisco and Washington, D.C. The first meet and confer under this  
25 procedure shall be in San Francisco. Each party shall bear its own costs of travel.
- 26 (4) Absent leave of the Court, there shall be no more than one meet-and-confer session per  
27 month.

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1       (5) If the parties are unable to resolve their differences after a meet and confer, they shall file a  
2 joint letter within a week of the meet and confer. The joint letter shall be no longer than  
3 three single-spaced pages and shall describe concisely the specific disputes which remain  
4 unresolved, and the last offer of compromise presented by each party. Only necessary  
5 exhibits should be attached. The Court shall decide, after reviewing the joint letter, whether  
6 a hearing of any kind is necessary. Any party that advances a position that is not  
7 substantially justified or refuses to propose or consider a reasonable offer of compromise  
8 risks being sanctioned.

9       B. Document Request No. 24

10      The parties continue to dispute Document Request No. 24. The Court orders the parties to  
11 meet and confer, in compliance with the Court's instructions above, regarding this dispute. The  
12 meet and confer shall take place by August 31, 2008.

13      To assist the parties, the Court provides the following guidance. The Court makes a  
14 distinction between information about Defendants' business practices and information about their  
15 customers. The potential class in the instant case consists of California customers only. Thus, to the  
16 extent BlueHippo made written responses or produced documents to regulatory agencies about  
17 customers of states other than California (*e.g.*, what a customer paid), that information is likely to be  
18 of marginal relevance, if at all. As for Defendants' business practices, however, it does not appear  
19 that they differed from state to state. Therefore, information about Defendants' business practices  
20 even if sent to a non-California regulatory agency and even if it incidentally affected non-California  
21 customers could be relevant if it reflects business practices which likely affected California  
22 residents. Of course, only the specific business practices challenged by Plaintiffs in their complaint  
23 are relevant. Moreover, as previously ordered by Judge White and the undersigned, relevance is  
24 measured by the issue of class certification, not the underlying merits.

25      To the extent Plaintiffs continue to claim that *all* of the written responses and documents  
26 produced in the FTC and Maryland proceedings are needed to respond to BlueHippo's superiority  
27 argument, the Court rejects that argument. Plaintiffs have failed to explain why they are not able to  
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1 address the superiority issue so long as BlueHippo provides the final agreements with the  
2 government entities.

3 Finally, the parties must be mindful of the balancing of burden and benefit under Rules  
4 26(b)(2(c); relevance alone is not dispositive. Documents with marginal relevance or largely  
5 duplicative need not be produced.

6 C. Interrogatory No. 17

7 Previously, the Court ordered a supplemental declaration from Defendants regarding the  
8 alleged burden that would be imposed if they had to respond to Interrogatory No. 17. A declaration  
9 was provided, after which both parties filed unauthorized letters. The parties shall meet and confer  
10 pursuant to the above proceedings and shall discuss and consider compromises/alternatives to  
11 complete verified disclosure, such as spreadsheets based on existing database previously produced to  
12 the FTC or other agencies, some form of sampling, etc.

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IT IS SO ORDERED.

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Dated: August 21, 2008

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EDWARD M. CHEN  
United States Magistrate Judge

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